

HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL NO. 175 OF 2006

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Between:

Sabavat Rukman Naik

.....Appellant

And

The Municipal Corporation of Hyderabad,

Tank Bund, Hyderabad, rep. by its

Commissioner and seven others.

.....Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri B. Sudhakar Reddy

Counsel for Respondent Nos.1&2 : Smt. G. Jyothi Kiran

Counsel for Respondent Nos.3&4 : Sri V. Ajay Kumar

Counsel for Respondent No.5 : Smt. M. Venkateswari

Counsel for Respondent No.6 to 8 : None

Dated: 21-02-2006

WRIT APPEAL NO. 175 OF 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 06-01-2006 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant for commanding respondent Nos. 1 to 5 to disconnect electricity/water supply and drainage to Plot No. 309 belonging to Sri Venkateswara Cooperative Society, M.L.A Colony, Banjara Hills, Hyderabad.

In the writ petition filed by him, the appellant claimed that the building constructed by respondent Nos. 6 to 8 is illegal and as the construction has been raised despite the injunction order passed by IV Junior Civil Judge, City Civil Court, Hyderabad, the public authorities should be directed to disconnect the supply of electricity/water and drainage. The learned Single Judge took cognizance of the facts relating to civil suit and land grabbing case filed by the petitioner against respondent Nos. 6 to 8 under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 as also the dispute of title between the parties and dismissed the writ petition by recording the following observations:

“A person who claims title to the land has a right to protect such title. If there is a trespasser on the land making attempts to raise constructions, the remedy in common law is to file a suit against such

person and obtain order prohibiting changing land use. Insofar as the right of the trespasser to raise construction is concerned, he/she cannot raise any construction on the land unless a valid permission is obtained from the local authority like Municipal Corporation of Hyderabad (MCH). When there is a dispute as to the ownership or title to the land on which a construction is sought to be made, the local authority or MCH have no power to decide the question of title, though in case of title dispute, such local authority can advise the rivals to resolve the dispute in a civil court. In case where permission is already obtained, the jurisdiction of MCH is limited to prevent illegal or unauthorized construction or construction in deviation of the sanction plan. No such jurisdiction vests in MCH to advise or direct public utilities like third respondent or fifth respondent to stop supply of water/electricity. Indeed, as rightly pointed out by the learned Standing Counsel for MCH, there is no provision in HMC Act or MCH Building Byelaws, 1981, which confers such power on the MCH. Likewise, as rightly pointed out by the learned Standing Counsel for fifth respondent Hyderabad Metropolitan Water Supply & Sewerage Board Act, 1989 does not confer any power on the Board to disconnect water supply, which is already given to an occupant.

It is brought to the notice of this Court that on an application made by the respondents 6 to 8, the Superintending Engineer gave eight service connections on 14.7.2004 in the apartment block constructed by eighth respondent after duly installing a separate transformer. It is also brought to the notice of this Court by the learned Standing Counsel for fifth respondent that an application was made on 01.4.2005 and the water supply connection was given to the apartment on 06.6.2005. There is no power vested in these authorities to disconnect power supply on the ground that there is a title dispute between two persons. Admittedly, the MCH already issued a caution notice in Newspapers on 11.7.2005 and the owners purchased the flats only after publication of the caution notice”.

We have heard Sri B. Sudhakar Reddy, learned counsel for the appellant and carefully perused the record. We are in complete agreement with the learned Single Judge that disputed questions of fact as also the dispute relating to title cannot be adjudicated in a petition filed under Article 226 of the Constitution of India and the remedy, if any, available to the petitioner is to file a civil suit.

We are further of the view that the writ petition ought to have been dismissed by the learned Single Judge on the ground of non-impleadment of the persons likely to be affected by disconnection of electricity and water supply/drainage. As per the

appellant's own assertion, respondent No. 8 has allotted the plots to third parties who are occupying the same. An order by the Court for disconnection of electricity and water supply/drainage to the building in dispute would directly affect the right to life guaranteed to the occupants under Article 21 of the Constitution of India and as none of them has been impleaded as party respondent, it is not possible for this Court to exercise power under Article 226 of the Constitution of India and pass order which would adversely affect the occupants, who as mentioned above, were not impleaded as parties to the writ petition.

For the reasons above, the appeal is dismissed. Needless to say that the appellant shall be free to avail remedy by filing civil suit.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

21-02-2005

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